

**THE DETERRENCE EFFECT OF CAPITAL PUNISHMENT IN
MALAYSIA**

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The students/authors confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others.

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CHAPTER ONE

INTRODUCTION

1.0 Introduction

The purpose of death penalty has always been for deterring the community from repeating crimes. Crimes that are punishable by death are considered the ultimate deterrent to the society. In Malaysia, crimes that are punishable by death are crimes of murder, drug related offences, threat against the country or the Yang Di-Pertuan Agong, kidnapping, possession and smuggling of illegal firearms and also waging war against the state and the country.

In the case of *R v Melnyk*, Justice Gerein, define deterrence as a principle or objective of sentencing a person guilty of a crime which ensures that the punishment is sufficient to deter the guilty person, and others, from committing the same crime¹. Moreover, In *R v Morrisette*, Justice Culliton wrote, in the context of a discussion on the factors to take into account when sentencing, he said, "Deterrence is also an important factor. The problem is different if the purpose of sentence is to deter the offender from repeating the offence from that if the purpose is to deter others who may be inclined to commit the same offence. In neither case does it necessarily follow that a long sentence is required to achieve the purpose. Deterrence should be considered from an objective view if the purpose is to deter others who may be inclined to commit the same offence. In such case, the gravity of the offence, the incidence of the crime in the community, the harm caused by it either to the individual or to the community and the public attitude toward it are some of the matters to be considered. If the purpose is to deter the offender from repeating the offence, then greater consideration must be given to the individual, his record and attitude, his motivation and his reformation and rehabilitation. If both purposes are to be achieved, then there must be a weighing of all of the factors and a sentence determined that gives a proper balance to each of them."² Hence Justice Gulliton explains that in every death sentence the main purposes of it all is for deterrence, and with deterrence the community will have a sense of security. He further

¹ *Duhaime.Org, Learn Law*. October 19, 2011, <http://www.duhaime.org/LegalDictionary/D/Deterrence.aspx>.

² *Ibid*.